

Internal Revenue Service, Treasury

§ 301.7611-1

available. A receipt or other evidence of actual cost shall be furnished. A travel allowance equal to the mileage allowance which the Administrator of General Services has prescribed, under 5 U.S.C. 5704, for official travel of employees of the Federal Government shall be paid to each summoned person who travels by privately owned vehicle. That rate is \$.20 per mile as of April 20, 1980. Computation of mileage under this paragraph shall be made on the basis of a uniform table of distances adopted by the Administrator of General Services. Toll charges for toll roads, bridges, tunnels, and ferries, taxicab fares between places of lodging and carrier terminals, and parking fees (upon presentation of a valid parking receipt) shall be paid in full to a summoned person incurring those expenses.

(4) *Subsistence allowances.* A subsistence allowance shall be paid to a summoned person (other than a summoned person who is incarcerated) when an overnight stay is required at the place of attendance because the place is so far removed from the residence of the summoned person as to prohibit return thereto from day to day. A subsistence allowance for a summoned person shall be paid in an amount not to exceed the maximum per diem allowance prescribed by the Administrator of General Services, under 5 U.S.C. 5702(a), for official travel in the area of attendance by employees of the Federal Government. As of April 30, 1979, that maximum per diem allowance is \$35 per day. A subsistence allowance for a summoned person attending in an area designated by the Administrator of General Services as a high-cost area shall be paid in an amount not to exceed the maximum actual subsistence allowance prescribed by the Administrator, under 5, U.S.C. 5702(c)(B), for official travel in that area by employees of the Federal Government. As of April 30, 1979, maximum rates of up to \$50 per day have been prescribed by the Administrator for certain areas. An alien who has been paroled into the United States for prosecution, under section 212 (d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)), or an alien who either has admitted belonging to a class of aliens who are deportable or has been determined under sec-

tion 242(b) of that Act (8 U.S.C. 1252(b)) to be deportable, shall be ineligible to receive the fees or allowances provided for under section 7610(a)(1).

(Secs. 7610(a) and 7805 of the Internal Revenue Code of 1954 (26 U.S.C. 7610(a) and 7805))

[T.D. 7899, 48 FR 32773, July 19, 1983; 48 FR 36449, Aug. 11, 1983]

§ 301.7611-1 Questions and answers relating to church tax inquiries and examinations.

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CHURCH TAX INQUIRY

Q-1: When may the Internal Revenue Service begin an inquiry of a church's tax liability?

A-1: Under section 7611 of the Internal Revenue Code, the Internal Revenue Service may begin a church tax inquiry only when the appropriate Regional Commissioner (or higher Treasury official) reasonably believes, on the basis of facts and circumstances recorded in writing, that the organization (1) may not qualify for tax exemption as a church; (2) may be carrying on an unrelated trade or business (within the meaning of section 513); or (3) may be otherwise engaged in activities subject to tax. Information received by the Internal Revenue Service at its request may not be used to form the basis of a reasonable belief to begin a church tax inquiry, unless the Service's request is made within the procedures of section 7611, is a request permitted by these questions and answers to be made without application of the

procedures of section 7611, or is a request to which the procedures of section 7611 do not apply.

Q-2: What is a church tax inquiry within the meaning of section 7611?

A-2: A church tax inquiry is any inquiry to a church (other than a routine request described in Q and A-4, an inquiry described in Q and A-5, an investigation described in Q and A-6 or an examination described in Qs and As 10 and 14), to serve as a basis for determining whether the organization qualifies for tax exemption as a church or whether it is carrying on an unrelated trade or business or is otherwise engaged in activities subject to tax. An inquiry is considered to commence when the Internal Revenue Service requests information or materials from a church of a type contained in church records. The term “church tax inquiry” does not include routine requests for information or inquiries regarding matters which do not primarily concern the tax status or liability of the church itself. See Q and A-4 with respect to routine requests regarding, among other things, withholding responsibilities for income tax or FICA (social security) tax liabilities. See Q and A-6 with respect to the types of investigations, other than routine requests, that are outside the scope of the procedures of section 7611. See Q and A-5 with respect to requests for third party records that are outside the scope of the procedures of section 7611.

Q-3: What is a “church” for purposes of the church tax inquiry and examination procedures of section 7611?

A-3: Solely for purposes of applying the procedures of section 7611, and as used in these questions and answers, the term “church” includes any organization claiming to be a church and any convention or association of churches. For purposes of the procedures of section 7611 and these questions and answers a church does not include separately incorporated church-supported schools or other organizations incorporated separately from the church.

ROUTINE REQUESTS

Q-4: What is a routine request to a church that is outside the scope of and

does not necessitate application of the procedures set forth in section 7611?

A-4: Routine requests to a church will not be considered to commence a church tax inquiry and will not necessitate application of the procedures set forth in section 7611. Routine requests for this purpose include (but are not limited to) questions regarding (1) the filing or failure to file any tax return or information return by the church; (2) compliance with income tax or FICA (social security) tax withholding responsibilities by the church; (3) any supplemental information needed to complete the mechanical processing of any incomplete or incorrect return filed by the church; (4) information necessary to process applications for exempt status and letter ruling requests; (5) information necessary to process and update periodically a church’s (i) registrations for tax-free transactions (excise tax), (ii) elections for exemption from windfall profit tax, or (iii) employment tax exemption requests; (6) information identifying a church that is used to update the Cumulative List of Tax Exempt Organizations (Publication No. 78) and other computer files; and (7) confirmation that a specific business is or is not owned or operated by a church.

THIRD PARTY RECORDS

Q-5: To what extent may the Internal Revenue Service gain access to third party records?

A-5: The Internal Revenue Service may request a church to provide information necessary to locate third-party records (for instance, bank records), including information regarding the church’s chartered name, state and year of incorporation, and location of checking and savings accounts, without application of the procedures of section 7611.

Records (for instance, cancelled checks or other records in the possession of a bank) held by third party recordkeepers, as defined in section 7609, are not considered church records. Thus, subject to the provisions set forth in section 7609 regarding third party summonses, access is permitted to such records without regard to the requirements of the procedures set

forth in section 7611. The Internal Revenue Service is generally required, under other rules, to inform a church of any Internal Revenue Service requests for materials.

Third party materials may be acquired without application of the procedures of section 7611; however, a determination that a church is not entitled to an exemption, or an assessment of tax for unrelated business income against a church, may not be made solely on the basis of third party records, without first complying with the requirements of two notices and offering of a conference (see Qs and As 9 and 10) pursuant to the procedures set forth in section 7611. This limitation does not apply to assessments of tax other than income tax resulting from loss of exemption or for unrelated business income (for instance, assessments of social security or other employment taxes). Third party bank records will not be used in a manner inconsistent with the procedures set forth in section 7611 or in these questions and answers.

SCOPE OF SECTION 7611

Q-6: What types of investigations, other than routine requests and requests for information necessary to locate and examine third party records, and examination of those records, are outside the scope of the procedures of section 7611?

A-6: The church inquiry and examination procedures described in section 7611 do not apply to (1) any inquiry or examination relating to the tax liability of any person other than a church; (2) any termination assessment under section 6851 or 6852, or jeopardy assessment under section 6861; or (3) any case involving a knowing failure to file a return or a willful attempt to defeat or evade tax (including but not limited to any case involving a failure by the church to withhold or pay social security or other employment taxes or income tax required to be withheld from wages). Additionally, the church inquiry and examination procedures do not apply to any criminal investigations.

The church tax inquiry and examination procedures also do not apply to inquiries or examinations which relate primarily to the tax status (including,

but not limited to, social security or self-employment tax or income tax required to be withheld from wages) or liability of persons other than the church (including, but not limited to, the tax status or liability of a contributor or contributors to the church), rather than the tax status or liability of the church itself. These may include, but are not limited to: (1) inquiries or examinations regarding the inurement of church funds to a particular individual or individuals or to another organization, which may result in the denial of all or part of such individual's or organization's deduction for charitable contributions to a church; (2) inquiries or examinations regarding the assignment of income or services or contributions to a church; and (3) inquiries or examinations regarding a vow of poverty by an individual or individuals followed by a transfer of property or an assignment of income or services to a church. Inquiries may be made to a church regarding these matters without being considered to have commenced a church tax inquiry under section 7611, and an examination of church records may be made relating to these issues (including enforcement of a summons for access to such records) without application of the requirements contained in section 7611 applicable to church tax inquiries and examinations. Such examinations are subject to the general rules regarding examinations of taxpayer books and records.

Q-7: What action may be taken if the church or its agents fail to respond to routine requests, or questions regarding other individuals' or organizations' tax liabilities?

A-7: Repeated (two or more) failures by a church or its agents to reply to routine requests (see Q and A-4) will be considered by the appropriate Internal Revenue Service Regional Commissioner to be a reasonable basis for commencement of a church tax inquiry under the church tax inquiry and examination procedures of section 7611. The failure of a church to respond to repeated requests for information regarding individuals' or other organizations' tax liabilities (see Q and A-6) will be considered a reasonable basis

for commencement of a church tax inquiry. Failure by a church to provide information necessary to locate third-party records (see Q and A-5) will be a factor, but not a conclusive factor, in determining if there is reasonable cause for commencing a church tax inquiry. For this purpose, a failure to respond to a request means either that no response has been made or that the response does not make a reasonable attempt to submit the information called for by the specific language of the request.

Q-8: Where an inquiry or examination is outside the scope of and does not necessitate application of the procedures of section 7611, what are the limitations on the Internal Revenue Service's actions?

A-8: Inquiries or examinations which are outside the scope of the procedures of section 7611 and therefore are conducted without application of the procedures of section 7611 (for instance, those addressed in Q and A-6) will be limited to the determination of facts and circumstances specifically relating to the tax liabilities of the individuals or other organizations in question. For example, in a case against an individual or other organization, information may be requested or church records examined, if pertinent, regarding amounts of money, property, or services transferred to the individual or individuals in question (including, but not limited to wages, loans, or non-contractual transfers), the use of church funds for personal expenses, or other similar matters, without having to follow the church tax inquiry and examination procedures. As one example, in an assignment of income case against an individual or other organization, information could be requested or church records examined if relevant to an individual's assignment of particular income, donation of property, or transfer of a business to a church. However, without following the church tax inquiry and examination procedures, no examination of a contributor or membership list in the possession of the church will be made, other than under the applicable procedures of section 7611, for the purpose of determining the overall financial structure of the church, merely because such

structure was relevant to the church's qualification as a tax-exempt entity and therefore indirectly relevant to the validity of contributors' deductions in general. Inquiries or examinations regarding individuals' or other organizations' tax liabilities will not be used in a manner inconsistent with the procedures set forth in section 7611 or in these questions and answers.

NOTICE REQUIREMENTS

Q-9: What satisfies the inquiry notice requirement (first notice) upon commencement of a church tax inquiry?

A-9: Upon commencing a church tax inquiry, the appropriate Regional Commissioner is required to provide written notice to the church of the beginning of the inquiry. This notice will include (1) an explanation of the concerns which gave rise to the inquiry and the general subject matter of the inquiry, which is sufficiently specific to allow the church to understand the particular area of church activities or behavior which is at issue; (2) a general explanation of the provisions of the Internal Revenue Code which authorize the inquiry or which may otherwise be involved in the inquiry; and (3) a general explanation of applicable administrative and constitutional provisions with respect to the inquiry, including the right to a conference with the Internal Revenue Service before an examination of church records is commenced. The inquiry notice (first notice) will generally request information in an effort to alleviate the concerns which gave rise to the inquiry.

However, the Internal Revenue Service is not precluded from expanding its inquiry beyond the concerns expressed in the inquiry notice (first notice) as a result of facts and circumstances which subsequently comes to its attention (including, where appropriate, an expansion of an unrelated business income inquiry to include questions of tax-exempt status, and vice-versa).

The inquiry notice requirement (first notice) does not require the Internal Revenue Service to share particular items of evidence with the church, or to identify its sources of information regarding church activities, if providing such information would be damaging to the inquiry or to the sources

of information. For example, in an inquiry regarding unrelated business income, the Internal Revenue Service might state that its inquiry was prompted by a local newspaper advertisement regarding a church-owned business. However, the Internal Revenue Service would not be required to reveal the existence or identity of any so-called "informers" within a church (including present or former employees).

Q-10: What must be done to satisfy the examination notice requirement (second notice) before commencing an examination of church records or religious activities with respect to an examination conducted under section 7611?

A-10: Where an examination is conducted under section 7611, church records or religious activities of a church may be examined only if, at least 15 days prior to the examination, written notice of the proposed examination is provided to the church and to the appropriate Regional Counsel. This notice is in addition to the notice of commencement of inquiry (first notice) previously provided to the church.

The notice of examination (second notice) is required to include (1) a copy of the church tax inquiry notice (first notice) previously provided to the church; (2) a description of the church records and activities sought to be examined; and (3) a copy of all documents which were collected or prepared by the Internal Revenue Service for use in the examination, and which are required to be disclosed under the Freedom of Information Act (5 U.S.C. 552) as supplemented by section 6103 of the Code (relating to disclosure and confidentiality of tax return information). The documents to be supplied under this provision will be limited to documents specifically concerning the church whose records are to be examined and will not include documents relating to other inquiries or examinations or to Internal Revenue Service practices and procedures in general. Disclosure to the church will be subject to restrictions regarding the disclosure of the existence or identity of informants. Although a description of materials to be examined will be provided in the notice of examination (second no-

tice), the description does not restrict the ability of the Internal Revenue Service to examine church records or religious activities which are not specifically mentioned in the notice of examination (second notice) but which are properly within the scope of the examination. Thus, the Internal Revenue Service is not precluded from expanding its inquiry beyond the concerns expressed in the examination notice (second notice) as a result of facts and circumstances which subsequently come to its attention (including, where appropriate, an expansion of an unrelated business income examination to include questions of tax-exempt status, and vice versa).

At the time the notice of examination (second notice) is provided to the church, a copy of the same notice will be provided to the appropriate Regional Counsel. The Regional Counsel is then allowed 15 days from issuance of the second notice in which to file an advisory objection to the examination. (This is concurrent with the 15-day period during which an examination of church records is prohibited pending a request for a conference.)

As part of the notice of examination (second notice), the church will be offered an opportunity to meet with an Internal Revenue Service official to discuss the concerns which gave rise to the inquiry and the general subject matter of the inquiry. An examination will not begin until 15 days after the mailing of the notice of examination (second notice). The organization may request a conference at any time prior to beginning of the examination and a conference so requested will be scheduled within a reasonable time after the request is made.

The purpose of the conference is to remind the church, in general terms, of the stages of the church tax inquiry and examination procedures and to discuss the relevant issues that may arise as part of the inquiry, in an effort to resolve the issues of tax exemption or liability without the necessity of an examination of church records or activities. Information properly excludable from a written notice of examination (second notice) (including information regarding the identity of third-party witnesses or evidence provided

by such witnesses) is not a subject for discussion at, and will not be revealed during, a conference.

Once a conference request is timely made, an examination will begin only following the conference. The conference requirement may not be utilized to delay an examination beyond the time reasonably necessary to prepare for and hold the conference. The holding of one conference with the church will be sufficient to satisfy the requirements of section 7611 and these questions and answers.

ACTION AFTER ISSUANCE OF NOTICE

Q-11: What action may be taken after issuance of the examination notice (second notice)?

A-11: After the examination notice (second notice) is issued, the organization may request a conference as described in Q and A-10 (see Q and A-12 with respect to time for issuance of examination notice). If the matters of concern which gave rise to the issuance of the examination notice (second notice) are resolved at the conference, it may be determined that an examination is not necessary. If the matters of concern are not resolved at the conference, or if the organization does not request a conference, the examination will ordinarily begin.

The examination will be conducted under the Internal Revenue Service's general examination procedures and the procedures of section 7611. The outcome of such an examination will ordinarily be: (1) No change in tax-exempt status or tax liability; (2) no change in such status or liability, conditioned on compliance with a request to modify in future tax periods matters such as internal accounting practices and procedures or coupled with a caution to refrain from increasing certain activities limited by the Internal Revenue Code, such as lobbying programs aimed at influencing legislation; (3) a proposal to revoke tax-exempt status; (4) a proposal asserting unrelated business income tax liability; or (5) a proposal asserting liability for other taxes.

In certain exceptional circumstances the Internal Revenue Service may, in lieu of an examination, propose to revoke the organization's exemption based upon the facts and circumstances

which form the basis for a reasonable belief to commence an inquiry under section 7611 and any other appropriate information that becomes apparent as a result of the inquiry, the conference, or both.

Pursuant to section 7611(d), the Regional Counsel is required to approve, in writing, certain final determinations that are within the scope of section 7611 and adversely affect tax-exempt status or increase any tax liability. The Regional Counsel will review and approve (1) a determination that an organization is not entitled to tax-exempt status; (2) a determination that an organization is not entitled to receive tax-deductible contributions; or (3) the issuance of a notice of tax deficiency to a church arising out of an inquiry or examination or, in cases where deficiency procedures are inapplicable, the assessment of any underpayment of tax by the church arising out of an inquiry or examination. The Regional Counsel will also state in writing that there has been substantial compliance with section 7611, when applicable.

PROCEDURAL TIME LIMITATIONS

Q-12: When may the notice of examination (second notice) be sent?

A-12. The notice of examination (second notice) may be mailed to a church not less than 15 days after the notice of commencement of a church tax inquiry (first notice). Thus, at least 30 days must pass between the first notice and the actual examination of church records since an examination may not begin until 15 days after the notice of examination (second notice). For example, if notice of commencement of an inquiry is mailed to a church on March 1st, the notice of proposed examination may be mailed to the church no earlier than the 15th day after the date of the inquiry notice, or March 16th. If the notice of examination (second notice) was mailed March 16th, no examination of church records may be made prior to day 30; thus, the earliest date the examination may commence is March 31st. If an organization does not request a conference prior to day 30, the Internal Revenue Service may proceed to examine church records and complete its investigation or make a

determination based on the information already in its possession.

Q-13: What is the limitation on the amount of time the Internal Revenue Service has to complete inquiries and examinations?

A-13: The Internal Revenue Service is required to complete any church inquiry or examination, and to make a final determination with respect thereto, not later than two years after the date on which the notice of examination (second notice) is mailed to the church. The running of this two-year period is suspended for any period during which (1) a judicial proceeding brought by the church or its officials or agents against the Internal Revenue Service with respect to the church tax inquiry or examination is pending or being appealed (even though section 7611(e)(2) describes the exclusive remedy for a violation of the church tax inquiry and examination procedures; see Q and A-17); (2) a judicial proceeding brought by the Internal Revenue Service against the church (or any official or agent thereof) to compel compliance with any reasonable request for examination of church records or religious activities is pending or being appealed; or (3) the Internal Revenue Service is unable to take actions with respect to the church tax inquiry or examination by reason of an order issued in a suit under section 7609 involving access to records held by third-party record-keepers. The two-year period is also suspended for any period in excess of 20 days (but not in excess of 6 months) in which the church or its agents fail to comply with any reasonable request for church records or other information. The two-year period may be extended by mutual agreement of the church and the Internal Revenue Service.

In cases where the inquiry is not followed by an examination notice (second notice), the inquiry must be concluded and a final determination made within 90 days of the date of the notice of inquiry (first notice). This 90-day period is suspended during any period for which the two year period for duration of a church examination would be suspended; except that the 90-day period will not be suspended because of the church's failure to comply with requests for information made prior to

the notice of examination (second notice).

Q-13a: When do the church tax inquiry and church tax examination periods commence and conclude?

A-13a: A church tax inquiry commences when the church tax inquiry notice (first notice) is mailed. A church tax inquiry must be concluded not later than 90 days after the church tax inquiry notice (first notice) date. The period is counted from the day after the inquiry notice (first notice) is mailed. A church tax inquiry is concluded when the results of the inquiry or the notice of examination, as appropriate, is mailed. For example, if the inquiry notice (first notice) is mailed on November 1, 1985, the church tax inquiry must be concluded, in the absence of a permissible suspension of the period (see Q and A-13), on or before January 30, 1986.

A church tax examination commences when the church tax examination notice (second notice) is mailed. A church tax examination must be concluded not later than the date which is 2 years after the examination notice (second notice) date. The period is counted from the day after the examination notice (second notice) is mailed. A church tax examination is concluded when the final determination is mailed. For example, if the examination notice is mailed November 16, 1985, the final determination must be made, in the absence of a permissible suspension of the period (see Q and A-13), on or before November 16, 1987.

EXAMINATION OF RECORDS OR RELIGIOUS ACTIVITIES

Q-14: To what extent may church records or religious activities of a church be examined?

A-14: In cases conducted under section 7611, an examination of church records may be made only after complying with the notice provisions of section 7611 (see Qs and As 9, 10 and 12) unless the church files a written waiver of the provisions of section 7611 or a part thereof. In cases conducted under section 7611 where no written waiver has been filed, church records may be examined only to the extent necessary to determine the liability for, and the

amount of, any Federal tax. This includes examinations (1) to determine the initial or continuing qualification of the organization whose records are being examined as a tax-exempt church under section 501(c)(3); (2) to determine whether the organization qualifies to receive tax-deductible contributions under section 170(c); or (3) to determine the amount of tax (including unrelated business income tax), if any, which is to be imposed on the organization.

Church records include all regularly kept church corporate and financial records including (but not limited to) corporate minute books, contributor or membership lists, and any materials which qualified as church books of account under section 7605(c), as in effect on December 31, 1984. Church records include private correspondence between a church and its members that is in the possession of the church. However, church records do not include records previously filed with a public official or newspapers or newsletters distributed generally to church members.

The religious activities of an organization claiming to be a church (see Q and A-3 for a definition of the term "church" as used in section 7611 and in these questions and answers) may be examined only to the extent necessary to determine if the organization actually is a church exempt from tax. This includes a determination of the organization's qualification as a church for any period.

LIMITATIONS ON PERIOD OF ASSESSMENT OR PROCEEDINGS FOR COLLECTION WITHOUT ASSESSMENT

Q-15: What are the special limitations on the period of assessment or proceedings for collection without assessment?

A-15: The special limitation periods for church tax liabilities are described below and are not to be construed to increase an otherwise applicable limitation period. Thus, a three-year limitation period would apply where a church filed a tax return before an examination was held and did not substantially understate income. No limitation period is to apply in any case of fraud, willful tax evasion, or knowing

failure to file a return which should have been filed.

In the case of any church tax examination with respect to the revocation of tax-exempt status under section 501(a), any tax imposed by chapter 1 (other than section 511) may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, only for the three most recently completed taxable years preceding the examination notice date (*i.e.*, the date the notice of examination is mailed to the church). If an organization is not a church exempt from tax under section 501(a) for any of the three years described in the preceding sentence, then the period of assessment will apply to the six most recently completed taxable years ending before the examination notice date.

For examinations concerning qualification for tax-exempt status, the examination is limited initially to an examination of church records which are relevant to a determination of tax status or liability for the three most recently completed taxable years ending before the examination notice date. If it is determined that an organization is not a church exempt from tax for one or more of the three most recently completed taxable years and no return has been filed for the three years ending before the three most recently completed taxable years, an examination of relevant records may be made, as part of the same examination, for the six most recently completed taxable years ending before the examination notice date. (This assumes that no returns were filed for any of the three years to which the examination is to be extended. If a return was timely filed for any such year, the filing of that return determines the applicable statute of limitations for that year in the absence of other factors, for example, fraud, willful tax evasion or substantial understatement, which ordinarily would extend the statute of limitations.)

For purposes of section 7611(d)(2)(A) and this question and answer, an organization is determined not to be a church exempt from tax for one or more of the three most recently completed taxable years ending before the

examination notice date, when the appropriate Regional Commissioner approves, in writing, the completed findings of the examining agent that the organization is not a church exempt from tax for one or more of such years. Such approval may not be delegated by the Regional Commissioner to a subordinate official. The completed findings of the examining agent, as approved by the appropriate Regional Commissioner for this purpose, do not constitute a final revenue agent's report under section 7611(g).

Church records of a year earlier than the third or sixth completed taxable year, as applicable, may be examined if material to a determination of tax-exempt status during the applicable three or six year period.

For examinations concerning unrelated business taxable income, where no return has been filed by the church, tax may be assessed or collected for the six most recently completed taxable years ending before the examination notice date. Church records of a year earlier than the sixth year may be examined if material to a determination of unrelated business income tax liability during the six year period.

For examinations involving issues other than revocation of exempt status or unrelated business income (*e.g.*, examinations relating to social security or other employment taxes), no limitation period is to apply if no return has been filed.

The applicable limitation period may be extended by mutual agreement of the church and the Internal Revenue Service.

MULTIPLE EXAMINATIONS

Q-16: What are the special multiple examination rules applicable to churches?

A-16: The Assistant Commissioner (Employee Plans and Exempt Organizations) is required to approve, in writing, any second inquiry or examination of a church, if the second inquiry or examination is to be undertaken within five years of an earlier inquiry or examination and if the earlier inquiry or examination did not result in either (1) revocation of tax exemption, notice of deficiency or an assessment of tax, or (2) a request for any significant

changes in church operational practices (including the adequacy or sufficiency of records maintained to reflect income). The Assistant Commissioner's approval is required only if the second inquiry or examination involves the same or similar issues as the earlier inquiry or examination. The 5-year period is counted from the examination notice date of the earlier examination or, if no notice of examination was mailed, the inquiry notice date of the earlier examination. This 5-year period is to be suspended for periods during which the two-year period for completion of an examination is suspended (as described in Q and A-13) unless the prior examination was actually concluded within 2 years of the notice of examination.

In determining whether the second church tax inquiry or examination involves the same or similar issues as the preceding inquiry or examination, the substantive factual issues involved in the two examinations, rather than legal classifications, will govern. For example, where a prior examination and a current examination of unrelated business income involve income from different sources, the current examination involves different issues than the prior examination and the approval of the Assistant Commissioner (Employee Plans and Exempt Organizations) is not necessary.

REMEDY FOR VIOLATIONS OF SECTION 7611

Q-17: What remedy is available for a violation of the church inquiry and examination procedures?

A-17: The exclusive remedy for any Internal Revenue Service violation of the church tax inquiry and examination procedures is as follows: Failure to comply substantially with the requirements that (1) two notices be sent to the church; (2) the Regional Commissioner approve the commencement of a church tax inquiry; or (3) an offer of a conference with the church be made (and a conference held if timely requested), will result in a stay of proceedings in a summons proceeding to gain access to church records (but not in dismissal of such proceeding), until these requirements are satisfied. The two-year limitation on duration of a

church tax examination will not be suspended during stays of summons proceedings resulting from violations described above; however, violations may be corrected without regard to the otherwise applicable time limits prescribed under the procedures of section 7611. In determining whether a stay is necessary, a court must consider the good faith effort of the Internal Revenue Service and the effect of any violation of the proper examination procedures.

Section 7611(e)(2) provides that no suit may be maintained and no defense may be raised, other than a stay in a summons enforcement proceeding, by reason of any noncompliance with the requirements of section 7611. Thus, failure to comply with any of these requirements may not be raised as a defense or affirmative ground for relief in any judicial proceeding including, but not limited to, a summons proceeding to gain access to church records; a declaratory judgment proceeding involving a determination of tax-exempt status under section 7428; a proceeding to collect unpaid tax; or a deficiency or refund proceeding. Additionally, failure to substantially comply with the requirements that two notices be sent, that the Regional Commissioner approve an inquiry, and that a conference be offered (and the conference held if requested) may not be raised as a defense or as an affirmative ground for relief in a summons proceeding or any other judicial proceeding other than as specifically set forth above. Therefore, a church or its representatives will not be able to litigate the issue of the reasonableness of the appropriate Regional Commissioner's belief in approving the commencement of a church tax inquiry (*i.e.*, that the church may not be tax-exempt or may be engaged in taxable activities) in a summons proceeding or any other judicial proceeding. The church retains the right to raise any substantive or procedural argument which would be available to taxpayers generally in an appropriate proceeding.

EFFECTIVE DATE

Q-18: What is the effective date of the church examination procedures?

A-18: The procedures set forth in section 7611 apply to all tax inquiries and examinations beginning after December 31, 1984. The procedures of section 7605 will apply to any examination commenced before January 1, 1985. Any activities commenced after December 31, 1984, that would constitute a new inquiry or new examination must comply with the procedures of section 7611.

APPLICATION TO SECTION 4958

Q-19: When do the church tax inquiry and examination procedures described in section 7611 apply to a determination of whether there was an excess benefit transaction described in section 4958?

A-19: See § 53.4958-8(b) of this chapter for rules governing the interaction between section 4958 excise taxes on excess benefit transactions and section 7611 church tax inquiry and examination procedures.

[T.D. 8013, 50 FR 9615, Mar. 11, 1985. Redesignated and amended by T.D. 8077, 51 FR 6220, Feb. 21, 1986; T.D. 8628, 60 FR 62213, Dec. 5, 1995; T.D. 8920, 66 FR 2171, Jan. 10, 2001; 66 FR 13013, Mar. 2, 2001; T.D. 8978, 67 FR 3099, Jan. 23, 2002; 67 FR 12472, Mar. 19, 2002]

GENERAL POWERS AND DUTIES

§ 301.7621-1 Internal revenue districts.

For delegation to the Secretary of authority to prescribe internal revenue districts for the purpose of administering the internal revenue laws, see Executive Order No. 10289, dated September 17, 1951 (16 FR 9499), as made applicable to the Code by Executive Order No. 10574, dated November 5, 1954 (19 FR 7249).

§ 301.7622-1 Authority to administer oaths and certify.

The officers and employees of the Internal Revenue Service whom the Commissioner has designated are authorized to administer such oaths or affirmations and to certify to such papers as may be necessary under the internal revenue laws or regulations issued thereunder, except that the authority to certify shall not be construed as applying to those papers or documents